

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

ADJUSTACAM LLC

PLAINTIFF,

v.

AMAZON.COM, INC.;  
AUDITEK CORPORATION;  
BALTIC LATVIAN UNIVERSAL  
ELECTRONICS, LLC D/B/A BLUE  
MICROPHONES, LLC D/B/A BLUE  
MICROPHONE;  
BLUE MICROPHONES, LLC;  
CDW CORPORATION F/K/A CDW  
COMPUTER CENTERS, INC.;  
CDW, INC.;  
CDW, LLC;  
COMPUSA.COM, INC.;  
COBRA DIGITAL, INC.;  
CREATIVE TECHNOLOGY LTD.;  
CREATVE LABS, INC.;  
DELL, INC.;  
DIGITAL INNOVATIONS, LLC;  
EASTMAN KODAK COMPANY;  
EZONICS CORPORATION  
D/B/A EZONICS  
CORPORATION USA D/B/A EZONICS;  
FRY'S ELECTRONICS INC.;  
GEAR HEAD, LLC;

Civil Action No.6:10-cv-00329

1 GENERAL ELECTRIC COMPANY; )  
 2 HEWLETT-PACKARD COMPANY; )  
 3 INTCOMEX, INC.; )  
 4 JASCO PRODUCTS COMPANY )  
 5 LLC D/B/A )  
 6 JASCO PRODUCTS COMPANY D/B/A )  
 7 JASCO; )  
 8 JWIN ELECTRONICS CORPORATION; )  
 9 KLIP XTREME LLC; )  
 10 KMART CORPORATION; )  
 11 LIFEWORKS TECHNOLOGY )  
 12 GROUP, LLC; )  
 13 MACALLY PERIPHERALS, INC. D/B/A )  
 14 MACALLY U.S.A; )  
 15 MACE GROUP, INC.; )  
 16 MICRO ELECTRONICS, INC. )  
 17 DBA MICRO CENTER )  
 18 NEW COMPUSA CORPORATION; )  
 19 NEWEGG, INC.; )  
 20 NEWEGG.COM, INC. )  
 21 OFFICE DEPOT, INC.; )  
 22 OVERSTOCK.COM, INC.; )  
 23 PHEBE MICRO INC.; )  
 24 PROLYNKZM INC.; )  
 25 RADIOSHACK CORPORATION; )  
 ROSEWILL INC.; )  
 SEARS BRANDS, LLC; )  
 SEARS HOLDINGS CORPORATION )  
 D/B/A SEARS )  
 SEARS, ROEBUCK AND COMPANY; )  
 SAKAR INTERNATIONAL, INC.; )  
 SAKAR, INC.; )  
 SDI TECHNOLOGIES, INC. )  
 SOFTWARE BROKERS OF )  
 AMERICA, INC. )  
 DBA INTCOMEX CORPORATION D/B/A )  
 INTCOMEX; )  
 SYSTEMAX, INC. D/B/A COMPUSA; )  
 TARGET CORP.; )1<sup>ST</sup> AMENDED ANSWER to PLAINTIFF's  
 TIGERDIRECT, INC.; )COMPLAINT, AFFIRMATIVE DEFENSES  
 23 TRIPPE MANUFACTURING COMPANY )and COUNTERCLAIMS  
 24 D/B/A TRIPP LITEL; AND )  
 25 WAL-MART STORES, INC., ) (CLERK's ACTION REQUIRED)  
 DEFENDANTS. )

**DEFENDANT MACALLY'S (hereinafter MACALLAY) and DEFENDANT MACE GROUP, INC (hereinafter MACE) ANSWERS, AFFIRMATIVE DEFENSES, and COUNTERCLAIMS IN RESPONSE TO PLAINTIFF ADJUSTACAM LLC's, ORIGINAL COMPLAINT**

1. ADJUSTACAM, LLC's opening paragraph does not itself appear to contain any allegations requiring a response.

**PARTIES**

2. As to paragraphs 1 – 25: Defendant MACALLY and Defendant MACE are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1-25, and therefore denies them.

3. Paragraph 26: Admit as to the Defendant MACALLY having a place of business in Ontario, California.

4. Paragraph 27: Admit as to the Defendant MACE having a place of business in Ontario California. Admit as to the collective reference of Macally Peripherals, Inc. d/b/a Macally USA and Mace Group, Inc. as MACALLY.

5. As to paragraphs 28 – 49: Defendant MACALLY and MACE are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27-49, and therefore denies them.

6. As to paragraph 50: Defendant MACALLY and MACE admit the action arises under the patent laws of the United States, Title 35 of the United States Code. Defendant MACALLY and Defendant MACE deny all of the other allegations and references contained in paragraph 50 of the Complaint.

7. As to paragraph 51: Defendant MACALLY and Defendant MACE, without waiving their right to challenge the venue of the district court in which this action has been commenced, admit

1 that venue in an action of this type is properly laid before an appropriate federal district court  
2 pursuant to the United States Code.

3 **COUNT 1**  
4 **INFRINGEMENT OF U.S. PATENT No. 5,855,343 (the "343 patent")**

5 8. As to paragraph 52: Defendant MACALLY and Defendant MACE are without knowledge or  
6 information sufficient to form a belief as to the truth of the allegation(s) of paragraph 52, and  
7 therefore deny them.

8 9. As to paragraph 53: Defendant MACALLY and Defendant MACE are without knowledge or  
9 information sufficient to form a belief as to the truth of the allegations of paragraph 53, and  
10 therefore deny them.

11 10. As to paragraph 54: Defendant MACALLY and Defendant MACE are without knowledge or  
12 information sufficient to form a belief as to the truth of the allegations of paragraph 54, and  
13 therefore deny them.

14 11. As to paragraphs 55 – 129: Defendant MACALLY and Defendant MACE are without  
15 knowledge or information sufficient to form a belief as to the truth of the allegations of  
16 paragraphs 55-129, and therefore deny them.

17 12. As to paragraph 130: Denied

18 13. As to paragraph 131: Denied

19 14. As to paragraph 132: Denied

20 15. As to paragraph 133: Denied

21 16. As to paragraphs 134 – 189: Defendant MACALLY and Defendant MACE are without  
22 knowledge or information sufficient to form a belief as to the truth of the allegations of  
23 paragraphs 134-189, and therefore deny them.

24 17. As to paragraph 190: Denied

1 18. As to paragraph 191: Defendant MACALLY and Defendant MACE are without knowledge  
2 or information sufficient to form a belief as to the truth of the allegations of paragraph 191, and  
3 therefore deny them.

4 19. As to paragraph 192: Defendant MACALLY Defendant MACE are without knowledge or  
5 information sufficient to form a belief as to the truth of the allegations of paragraph 192, and  
6 therefore deny them.

7 20. As to paragraph 193: Defendant MACALLY Defendant MACE are without knowledge or  
8 information sufficient to form a belief as to the truth of the allegations of paragraph 193, and  
9 therefore deny them.  
10

11 **COUNTERCLAIMS**

12 Defendant MACALLY and Defendant MACE, for their Counterclaims against ADJUSTACAM,  
13 LLC and upon information and belief, state as follows:

14 **THE PARTIES**

15 1. Defendant MACALLY and Defendant MACE have a principal place of business at Ontario,  
16 California.

17 2. On information and belief, Plaintiff ADJUSTACAM, LLC is a Texas limited liability  
18 company with its principal place of business at Frisco, Texas.  
19

20 **JURISDICTION AND VENUE**

21 3. Subject to MACALLY's and MACE's affirmative defenses and denials, MACALLY and  
22 MACE allege that this Court has jurisdiction over the subject matter of these Counterclaims  
23 under, without limitation, 28 U.S.C. §§ 1331, 1367, 1338(a), 2201, and 2202, and venue for  
24 these Counterclaims is proper in this district.

25 4. This Court has personal jurisdiction over ADJUSTACAM, LLC.

**FACTUAL BACKGROUND**

5. In its Original Complaint, ADJUSTACAM, LLC asserts that MACALLY and MACE have infringed U.S. Patent No. 5,855,343 ('343 patent(s))

6. The '343 patent(s) is/are invalid and/or have not been and are not infringed by MACALLY and MACE, directly or indirectly.

7. Consequently, there is an actual case or controversy between the parties over the non-infringement, invalidity, and/or unenforceability of the '343 patent(s).

**COUNT ONE**

**Declaratory Judgment of Non-Infringement of U.S. Patent No. 5,855,343**

8. MACALLY and MACE restate and incorporate by reference their allegations in paragraphs 1 through 7 of its Counterclaims.

9. An actual case or controversy exists between MACALLY and MACE and ADJUSTACAM as to whether the '343 patent is not infringed by MACALLY.

10. A judicial declaration is necessary and appropriate so that MACALLY and MACE may ascertain their rights regarding the '343 patent.

11. MACALLY and MACE have not infringed and does not infringe, directly or indirectly, any valid and enforceable claim of the '343 patent.

12. This is an exceptional case under 35 U.S.C. § 285 including without limitation because ADJUSTACAM, LLC filed its Complaint with knowledge of the facts stated in this Counterclaim.

**COUNT TWO**

**Declaratory Judgment of Invalidity of U.S. Patent No. 5,855,343**

13. MACALLY and MACE restate and incorporate by reference their allegations in paragraphs 1 through 12 of their Counterclaims.

1 14. An actual case or controversy exists between MACALLY and MACE and ADJUSTACAM  
2 as to whether the '343 patent is invalid.

3 15. A judicial declaration is necessary and appropriate so that MACALLY and MACE may  
4 ascertain their rights as to whether the '343 patent is invalid.

5 16. The '343 patent is invalid for failure to meet the conditions of patentability and/or  
6 otherwise comply with one or more of 35 U.S.C. §§ 100 et seq., 101, 102, 103, 112, 132 and  
7 251.

8 17. This is an exceptional case under 35 U.S.C. § 285 including without limitation  
9 because ADJUSTACAM filed its Complaint with knowledge of the facts stated in this  
10 Counterclaim.  
11

12 **PRAYER FOR RELIEF**

13 These paragraphs set forth the statement of relief requested by ADJUSTACAM, LLC to which  
14 no response is required. MACALLY and MACE deny that ADJUSTACAM is entitled to any of  
15 the requested relief and denies any allegations.

16 WHEREFORE, MACALLY and MACE prays for judgment as follows:

17 a. A judgment dismissing ADJUSTACAM's complaint against MACALLY and MACE with  
18 prejudice;

19 b. A judgment in favor of MACALLY and MACE on all of their Counterclaims;

20 c. A declaration that MACALLY and MACE have not infringed, contributed to the infringement  
21 of, or induced others to infringe, either directly or indirectly, any valid claims of the  
22 '343 patent(s);

23 d. A declaration that the '343 patent(s) are invalid;

24 e. An award to MACALLY and MACE for the amount of damages as proven at trial, including  
25

punitive damages;

f. A declaration that this case is exceptional and an award to MACALLY and MACE of their reasonable costs and expenses of litigation, including attorneys' fees and expert witness fees;

g. A judgment limiting or barring ADJUSTACAM's ability to enforce the '343 patents in equity;

h. Such other and further relief as this Court may deem just and proper.

### **DEMAND FOR JURY TRIAL**

In accordance with Rule 38 of the Federal Rules of Civil Procedure and Local Rule CV-38, MACALLY and MACE respectfully demand a jury trial of all issues that may or should be tried to a jury in this action.

November 16, 2010

Respectfully Submitted

MACALLY PERIPHERALS, INC. D/B/A  
MACALLY U.S.A  
MACE GROUP, INC.

*By:/s/ Peter M. Lukevich*  
Attorney at Law  
APEX JURIS, PLLC  
12733 Lake City Way NE  
peter@apexjuris.com  
Seattle, WA 98125  
Telephone: (206) 664.0314  
Facsimile: (206) 664.0329

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that counsel of record who are deemed to have consented to electronic service are being served with a copy of this **DEFENDANT MACALLY's**



1 **ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS**, via the Court's  
2 CM/ECF system per Local Rule CV-5(a)(3) on this 16<sup>h</sup> day of November, 2010.  
3

4 /s/ Peter M. Lukevich  
5 Peter M. Lukevich  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25